

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

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FORD MOTOR COMPANY,

Respondent,

and

Case 07-CA-198075

Judge David I. Goldman

LOCAL 324, INTERNATIONAL UNION OF OPERATING
ENGINEERS (IUOE), AFL-CIO

Charging Party,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), and its LOCAL
UNION NUMBER 245

Intervenors.

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**POST-HEARING BRIEF OF INTERVENORS INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW), and its LOCAL NUMBER 245**

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INTRODUCTION

This case is fundamentally about the scope of UAW Local 245's bargaining unit. For decades, Local 245 has represented every skilled maintenance tradesperson who works at all Company-owned and -operated facilities within the Ford Motor Company (Ford) Research and Engineering Center (R&E Center). The R&E Center is a multi-facility campus consisting of dozens of buildings, spread across four neighboring Detroit suburbs, at which Ford designs, develops, and tests new prototype automobiles. Local 245 maintains the R&E Center facilities using a dynamic staffing model. Some members are staffed at individual facilities; other members rotate freely between all the facilities. All hiring, firing, and other significant personnel decisions are made exclusively by centralized Ford management, and Ford moves employees around the R&E Center as needed to meet its business needs. Overtime is equalized across all facilities, meaning that Local 245 members typically work overtime in multiple facilities. The combination of transfers, overtime, and the circulation of mobile tradespersons throughout the unit, creates a high degree of interchange and interaction among Local 245's members. The multi-facility nature of the unit, and the rules governing its operation, are codified in both the master collective bargaining agreement (CBA) between Ford and the UAW and in Local 245's CBA.

The ultimate question in this case is whether Board law requires Ford and Local 245 to abandon this model—in contravention of their CBA and decades of practice—at a single facility within the R&E Center called the Drivability Test Facility (DTF). Ford acquired the DTF from another corporation that had contracted with a company called Jacobs Industrial Services (Jacobs) to maintain the facility. Ford decided to insource the maintenance work at the facility and assign it to Local 245, as it was contractually bound to do. In the process, it hired four former Jacobs tradespersons into the R&E Center and assigned them to work at the DTF alongside two Local 245 tradespersons who were transferred there. Ford also continuously assigns mobile Local 245

members to provide an array of skilled maintenance that Jacobs previously sourced through other outside subcontractors. Mobile staff interact in myriad ways with the six tradespersons assigned to the DTF. Meanwhile, the DTF-based employees have been actively training other Local 245 tradespersons as part of a plan Ford and Local 245 initiated from the outset of the insourcing to fully integrate the DTF into the R&E Center's maintenance ecosystem and to increase the number of employees staffed at the facility.

The General Counsel contends that because there are six skilled tradespersons staffed at the DTF, a bare majority of whom were previously represented by the Charging Party, Ford is a successor employer that must recognize and bargain with the six employees as a separate unit. The General Counsel's simplistic view of this case disregards the facts and history just discussed and fails for several resulting reasons. Each reason reflects the same underlying reality: the DTF is now part of Ford's integrated R&E Center, and all the maintenance work at the Ford-owned and operated facilities in the Center has been provided for decades by Local 245 through a dynamic multi-facility bargaining unit. Requiring Ford to separately bargain with a tiny single-facility unit at the DTF would unnecessarily disrupt that model. As such, the maintenance employees at issue here are, and should be, represented by Local 245 for multiple overlapping legal reasons.

Most fundamentally, Board precedent establishes that there is no need to conduct an accretion or successorship analysis when a CBA contractually guarantees certain work to an alleged successor employer's pre-existing union under either a multi-facility, or a functionally defined, unit description. In such situations, an accretion or successorship analysis risks undermining the collectively bargained unit agreed to by the alleged successor employer and its union. That is what would happen here if the Charging Party is found to represent the DTF-based employees. The CBA explicitly recognizes the R&E Center as a "multi-plant employment

location,” and decades of history shows that Ford has automatically recognized Local 245 as the representative of its maintenance workers at dozens of its R&E Center facilities over the year. Because the CBA and decades of practice establishes Local 245 as a multi-facility unit servicing all R&E Center facilities, and a functionally defined unit at that, Local 245 is the proper representative of skilled maintenance employees at the DTF. That analysis should end this case.

Alternately, if the facts are examined under a successorship framework, Ford is not a successor for each of three separate and independently sufficient reasons. First, the unit is not really composed of six tradespersons but properly includes other Local 245 members who provide skilled maintenance at the DTF. Significantly, some of the skilled maintenance provided by other Local 245 members includes refrigeration/heating maintenance and repair and general building maintenance—precisely the types of work that the General Counsel himself alleges as defining the unit. Second, there is no substantial continuity between the DTF as it was maintained under Jacobs versus how it is maintained by Ford. Ford’s system involves new and significant employee interchange, including overtime and training, across the R&E Center. All significant personnel decisions are determined centrally. All the R&E Center facilities are in very close geographical proximity to each other, and three other R&E Center facilities are across the road from the DTF. The tradespersons at the DTF have the same skills and qualifications and do essentially the same work as steam engineers and electricians throughout the DTF. Third, Ford has not yet hired a substantial and representative complement at the DTF because it has yet to hire anyone into half or more of the classifications it intends to staff at the facility.

Finally, even if Ford is a successor, the employees at the DTF have accreted to the larger Local 245 unit for reasons similar to the reasons that establish a lack of substantial continuity between Ford’s and Jacob’s operation of the facility.

FACTS

I. Local 245 Is a Dynamic, Multi-Facility Unit in which Members are Frequently Moved Between Facilities and Employee Interchange is Common.

Local 245 has over 800 members who work for Ford in Dearborn, Dearborn Heights, Allen Park, and Melvindale, Michigan. Tr. at 290:23–25, 306:15–307:20. Approximately 700 are skilled tradespersons. Tr. at 291:6–8, 293:10–12. As of October 2017, 526 of these tradespersons were skilled maintenance workers in trades such as carpenters, millwrights, stationary steam engineers, electricians, plumbers, industrial truck mechanics, and refrigeration maintenance and installation technicians (RMIs). Tr. at 292:22–293:15, 295:3–10; Int. Ex. 1.

Local 245's skilled maintenance workers service 58 different facilities. Tr. at 298:8–11. These facilities constitute Ford's Research and Engineering Center (R&E Center), the division of Ford that is responsible for the research and development of new Ford automobiles. Tr. at 298:14–299:1. The R&E Center is an accumulation of several corporate buildings that, in turn, belong to five core subdivisions, as well as sixth subdivision that is composed of a variety of commercial buildings owned by Ford Land Company (Ford Land).¹ Tr. at 298:12–299:5, 308:3–309:8. The five core R&E Center subdivisions are: the Engine Manufacturing Development Operations (EMDO), where prototype engines are developed; the New Model Program Development Center (NMPDC), where body prototypes are built; the R&E Administration Garage, where Local 245 and Ford conduct trainings; the R&E Central Staff, where prototype engines and vehicles are tested; and the Research and Innovation Center (RIC), where advanced research is conducted. Tr. at 302:10–305:1. The sixth subdivision, which was added to the R&E Center in 1999, consists of certain commercial buildings managed by Ford Land's Site Management Operations (SMO)

¹ Ford Land Company is a separately incorporated division of Ford Motor Company that owns and operates Ford-owned commercial real estate. Tr. at 302:4–7, 565:18–22, 626:21–24.

division where research and testing work is not typically done. Tr. at 305:2–12; *see* Int. Ex. 2 (map of R&E Center). On the map that was introduced as Intervenor’s exhibit 2, the divisions just discussed correspond to the following colors: EMDO/green; NMPDC/yellow; R&E Garage/orange; R&E Central Staff/blue; RIC/red; SMO/purple. Int. Ex. 2.

Of the buildings composing the R&E Center, the five core categories represent all of the Ford corporate buildings where research, design, and testing of new automobiles occurs. Tr. at 298:12–22, 302:10–305:1, 467:7–14. By contrast, the SMO buildings are commercial buildings owned by Ford Land and leased to both Ford and non-Ford tenants engaged in any sort of business. Tr. at 305:2–12, 445:17–446:1, 466:19–467:6. Local 245 provides the skilled maintenance at the SMO buildings only when such buildings are 50% or more occupied by Ford tenants. Tr. at 445:22–24. SMO Buildings that are not currently 50% Ford occupied are not meant to be shaded-in on Intervenor’s Exhibit 2.² Tr. at 445:22–24, 472:22–473:6. Unlike the purple-shaded SMO

² At trial, it was established that nine commercial SMO buildings were incorrectly colored in using purple on the map that constitutes Intervenor’s Exhibit 2. Tr. at 446:3–14, 471:11–472:2 (identifying three erroneously shaded-in buildings); Tr. at 606:16–607:19 (stipulating to six more erroneously shaded-in purple buildings). The map is created by Ford Land, not by Local 245. Tr. at 300:7, 472:13–19. Six of the erroneously shaded buildings are serviced by Local 245 if and when they are 50+% Ford-occupied, Tr. at 472:22–473:6, 625:21–626:20—but they are not 50% Ford-occupied at this time. The other three erroneously-shaded buildings should not have been identified on the map legend because they are commercial buildings that are serviced by UAW Local 600, rather than Local 245, when they become 50+% occupied by Ford tenants. Tr. at 473:19–23. There were no errors in the shading of the five core categories of buildings. Tr. at 624:23–625:10. As discussed above, those five categories of buildings are the ones where Ford’s research and engineering activities occur, and they have always been maintained by Local 245.

The Charging Party introduced testimony that certain additional buildings listed as SMO buildings on the map legend, but which were not shaded in on the map, are serviced by IUOE Local 324. *See* Tr. at 614:1–617:11; CP Ex. 1. The map does not suggest that Local 245 represents those buildings because they are not shaded in. *See* Tr. at 305:2–12, 625:21–626:20. Unshaded SMO buildings listed on the legend are buildings that everyone agrees are not currently 50%+ occupied by Ford tenants, and thus Local 245 has no claim to the work there.

buildings, the five core categories of R&E Center buildings are always 100% Ford occupied and operated and are always serviced by Local 245 skilled tradespersons. Tr. at 451:17–18 (“All corporate buildings that do R&E testing have always been part of Local 245.”), 467:23–468:2.

Ford Land does not own the corporate buildings in the five core subdivisions of the R&E Center—Ford Motor Company does. However, Ford Land/SMO managers supervise the skilled maintenance workers who service the buildings in the blue (R&E Central Staff) and orange (R&E Central Garage) buildings for Ford. Tr. at 305:13–306:14. Because Ford Land/SMO managers supervise the skilled tradespersons in those two subdivisions, Local 245 employees who work in those two categories of buildings are coded as “SMO” employees in certain Ford databases to reflect the fact that those employees are paid by SMO. *Id.*

The 526 skilled tradespersons servicing the R&E Center are staffed in a dynamic and evolving fashion. Of the 58 buildings serviced by Local 245, approximately 28 have Local 245 members staffed there as their primary workstation. Tr. at 318:16. Tradespersons staffed in this fashion constitute approximately 55–60% of Local 245’s skilled maintenance membership. Tr. at 319:2–5. The remaining 40–45% are mobile, meaning that they work at any of the 58 buildings in the R&E Center and move from facility-to-facility on a daily (or more frequent) basis. Tr. at 318:19–319:5, 533:9–17, 547:16–21. Mobile employees regularly interact and work with stationary tradespersons at all facilities. Tr. at 347:8–22, 508:14–25, 523:24–11.

The determination of whether each skilled tradesperson will be mobile or staffed at a particular facility is made by Ford-employed managers. Tr. at 319:6–320:8, 522:12–18, 535:10–

The Charging Party also introduced evidence that certain commercial Ford Land buildings pictured on the map, but *not* labelled on the legend, are serviced by IUOE Local 324. Tr. at 617:12–619:24; CP Ex. 1. Local 245 never represents maintenance workers at those buildings, because even when those commercial buildings become 50+% Ford-occupied, they are serviced by UAW Local 600. Tr. at 627:10–23.

14, 590:16–20. Ford can and does reassign workers from mobile to stationary status—or from being stationed at any given facility to another. Tr. at 320:3–323:15, 535:18–19. Some tradespersons change assignments four or five times a year, and an average tradesperson faces a 20–25% chance of being reassigned within a given year. Tr. at 321:4–9. In addition, both mobile and stationary employees can be, and are, moved on a short-term basis to respond to emergencies at other facilities. Tr. at 349:12–350:9. Similarly, both mobile and stationary tradesperson can be reassigned on a somewhat longer-term basis in situations where Ford requires a surge in manpower to deal with tasks such as repurposing a building or installing equipment. Tr. at 320:15–24 (describing a situation where 80 skilled tradespersons were reassigned to deal with a large project at a facility), 523:21–23 (discussing “assignments like steam jobs or other jobs on different times of the week, like the weekends, and we all come together to take care of that responsibility”).

The Local CBA permits members to express shift preferences based on seniority, but it does not give them a right them to bump into specific preferred buildings or to demand a transition from mobile to stationary status (or vice versa). Tr. at 319:12–15, 321:10–323:15, 549:10–16; Int. Exs. 16(b), (c). That said, an employee who exercises a shift bump is often able to anticipate—albeit not control—the position or location to which that employee will be reassigned. This is because a bumping employee typically displaces the lowest-seniority employee on the shift that the bumping employee is requesting. Thus, the bumping employee can often anticipate which employee he or she is likely to replace. Tr. at 319:16–320:2.

The staffing model that Ford and Local 245 utilize at the R&E Center serves several purposes. From Ford’s perspective, it is economically efficient, allowing manpower and other resources to be shared across facilities. Tr. at 587:11–22. For example, one building “might not have a plumbing problem for 2 weeks, but then when we do need four plumbers now . . . we can

move from building to building, then can react very efficiently.” Tr. at 323:20–24; *see also* Tr. at 323:18–20, 323:25–324:1. Similarly, as new prototypes are moved from one facility to another, maintenance needs migrate between R&E Center facilities, and Local 245 tradespersons can follow the work. Tr. at 586:17–587:1. From Local 245’s perspective, its members “get to expand their skills and techniques by working on such a diverse amount of stuff” and they have “tremendous” job security because of their mobility and flexibility. Tr. at 324:2–6; *see also* Tr. at 587:23–588:7.

In addition to pooling labor, Local 245 pools equipment and materials. Tr. at 324:7–21, 588:8–12. Local 245 members have access to 60–70 shared pickup trucks and vans for moving between facilities as needed. Tr. at 318:17–23. Some materials are stored in a central crib where they can be accessed by any tradesperson, and equipment such as pipe threading machines, conduit benders, and mobile dynamometers are also provided centrally so that each facility does not require a full complement of such tools. Tr. at 324:7–21, 540:24–541:14, 570:1–2. This results in higher utilization rates of Ford staff and equipment. Tr. at 588:13–23.

Overtime is equalized across Local 245, resulting in members regularly working in multiple buildings with other members they may not otherwise encounter. The Local CBA provides that, with certain minor exceptions,³ overtime is equalized within each trade across the entire R&E Center. Tr. at 317:2–23; *see* Int. Ex. 16(a). Under the local Overtime Agreement, all the subdivisions of the R&E Center are “considered one overtime group unless otherwise indicated.” Ex. 16(a) at ¶ 1. This means that all tradespersons are expected to work overtime at

³ For example, an employee “working on a specific assignment requiring daily overtime may be scheduled for the daily overtime.” Int. Ex. 16(a) ¶ 2. And new-hire or apprentice stationary steam engineers must complete a training rotation “across the various SSE work assignments before being assigned to work weekend overtime alone.” Int. Ex. 16 at 27 (Letter of Understanding re: Scheduling of SSE Overtime).

facilities other than the ones to which they are primarily assigned (if they are assigned to one at all). Tr. at 339:11–340:7; *see* Int. Ex. 16(a). As a result, some members will typically work overtime “every weekend” at facilities where they are not otherwise assigned. Tr. at 340:8–11. Thus, under normal circumstances, Local 245 tradespersons circulate through numerous facilities rapidly. *See* Tr. at 477:4–5, 481:9–11 (steam engineer George Dusaj worked at “most of the blue buildings” in three years at Ford), 497:2–10 (same); Tr. at 514:21–23 (RMI Mike O’Malley has worked at all R&E Center facilities); Tr. at 524:17–22 (similar for steam engineer James Muhammad); Tr. at 536:10–17 (electrician Emanuel Dan worked at 15–20 facilities in slightly over one year at the R&E Center); Tr. at 548:19–21 (electrician Gerald Maynard has worked at 20–25 facilities in about one-and-a-half years at the R&E Center). The determination of where any given employee needs to work overtime is made by Ford management. Tr. at 340:4–7, 537:11–24.

II. Personnel Policy, Human Resources, and Labor Relations in the R&E Center Are Centralized and On-Site Supervisors Have Minimal Substantive Authority.

The members of Local 245 have a mixed supervisorial structure. Front-line supervision is provided in most R&E Center facilities by contractors, most of whom work for a company called CBRE. Tr. at 341:1–342:1. In the NMPDC and EMDO subdivisions, front-line supervisors are Ford Motor Company employees. Tr. at 342:1–3. The immediate supervisors typically are not skilled tradespersons: “[t]hey’re basically timekeepers . . . [t]hey have more clerk functions,” and many cannot actually provide technical supervision. Tr. at 341:16–20; *see also* Tr. at 342:17–22. Instead, most technical supervision is provided by other Local 245 members who are designated as team leaders or other experienced colleagues. Tr. at 343:10–25. Mobile employees consult on-site team leaders when needed, Tr. at 344:1–9, and employees assigned to a particular site will consult with off-site team leaders when needed, Tr. at 490:15–24 (describing Local 245’s “support

system”), 506:9–12 (team leader Mike O’Malley describing his duties as including assisting his team of both mobile and stationary employees with “any issues, any parts that need to get done”), 527:14–20 (“[T]he way we work at the [R&E] center is that we network with each other, and through the supervisor, to get any assistance that I may need.”). When mobile employees report to a worksite, they typically report to an on-site tradesperson for further information or any necessary orientation. Tr. at 346:6–347:22. Members of Local 245 are responsible for monitoring equipment at all R&E Center facilities to ensure compliance with Ford safety standards, and knowledge of these standards is shared between mobile and stationary skilled tradespersons. Tr. at 350:18–351:11. In addition, tradespersons who are stationary sometimes report both to an on-site supervisor and another supervisor located centrally in the R&E Center. Tr. at 523:1–14.

Front-line contractor-supervisors are supervised by Ford-employed superintendents. Tr. at 345:10–346:5; *see* Int. Ex. 7 (organization chart for Ford Land). The Ford superintendents have exclusive responsibility for hiring, interviewing, and firing, Tr. at 348:12–15; for manpower deployment, Tr. at 346:4–5, 347:23–348:11; for reassigning employees from one facility to another or from mobile to stationary status, Tr. at 348:4–8; and for deploying employees to respond to maintenance emergencies, which occur on a daily or weekly basis, Tr. at 349:22–25, 588:24–589:24. They also have primary responsibility and decision-making authority for promotion decisions, Tr. at 348:16–22, and for determining what training Local 245 members will receive, Tr. at 348:23–349:8. Grievances are first raised orally with contractor-supervisors, but Ford superintendents are involved at a “second oral” stage before any grievance is advanced to the second formal step of the grievance procedure. Tr. at 351:12–353:3.

III. The CBA and Bargaining History Establish the Multi-Facility Nature of the Local 245 Unit.

The national (or master) CBA between UAW and Ford recognizes the multi-facility nature of the Local 245 unit. The master CBA covers all Ford employees described in the agreement “at each Company location which w[as] actually covered by the last preceding Agreement.” Int. Ex. 15(a) (Art. I, Section 1(b) & (c)). In turn, Appendix N of the CBA, which is a “particularly important” provision, is the only provision of the CBA that lists all facilities covered by the CBA. Tr. at 309:22–311:14; *see* Ex. 15(c) at 242–44. Appendix N describes the “Research & Engineering Center” as a “multi-plant location.” Tr. at 310:21–311:6; *see* Int. Ex. 15(c) at p. 244. It also states that the Research & Engineering Center is broken down into the same six subdivisions discussed above: EMDO, NMPDC, R&E Administrative Garage, R&E Central Staff, RIC, and Site Management Operations.⁴

The Local CBA similarly recognizes the multi-facility nature of the unit via the overtime equalization provision discussed above. Tr. at 316:19–317:24; Int. Ex. 16(a). The Local CBA’s overtime provision also lists the trades that Local 245 represents. Int. Ex. 16(a), Attachment A (p. 25).

The multi-facility nature of the R&E Center bargaining unit is also addressed in a series of letters of understanding and other documents drafted by Ford and Local 245 that were introduced into evidence. Local 245’s history of performing skilled maintenance work at Ford’s research and testing facilities dates back to 1942. In 1941, the UAW was recognized as the bargaining

⁴ Appendix N also states that a portion of the NMPDC is represented by UAW Local 931. That is because NMPDC’s work involves production in addition to research and development. The skilled maintenance and model-making at the NMPDC is provided by Local 245, while the NMPDC’s production work is performed by Local 931. Tr. at 311:3–10.

representative of most Ford production and maintenance employees. Tr. at 329:5–23. However, the “Dearborn Laboratory” (or “East Dearborn”) campus, where Ford’s research and testing was conducted, was initially not represented. Tr. at 329:20–22. The campus instead came to be represented by UAW in 1942, as recognized by a letter from the UAW to the workers at East Dearborn. Int. Ex. 3; Tr. at 327:13–328:3. This same understanding was repeated in a 1942 letter sent by both Ford and the UAW to the War Labor Board. Int. Ex. 4; Tr. at 329:3–13. At that time, the “laboratory,” which is the direct predecessor to the current R&E Center, was already a multi-facility campus. Tr. at 329:10–23. It included an engineering lab, the farm garage, the airframe building, and a soybean process research facility—all buildings that are predecessors of current R&E Center facilities that are maintained by Local 245. Tr. at 327:17–25, 329:14–16; Int. Ex. 3.

A pair of letters exchanged by Ford and Local 245 in 1979 and 1982 also address the multi-facility nature of the bargaining unit. In 1979, Ford sent a letter to Local 245 describing the parties’ agreement regarding “certain skilled maintenance, janitorial and yard work at several of the Company’s existing and proposed engineering facilities.” Int. Ex. 5. The letter formalized an agreement for Local 245 to provide the skilled maintenance work at several testing and development facilities in the greater Detroit area. Tr. at 332:21–333:18. Many of the facilities covered by the 1979 letter still exist, and all that do are still maintained by Local 245 skilled tradespersons. Tr. at 334:4–8. Local 245 has also maintained related facilities as covered facilities were relocated or merged with other facilities over the years. Tr. at 334:8–24.

In 1982, Local 245 sent a letter to Ford summarizing the parties’ discussions that followed the 1979 letter. The 1982 letter states that “an understanding was reached between the parties that when a new building went into operation in the immediate confines of the Research and Engineering Center, all skilled maintenance, janitorial and yard work should be assigned to

employees [sic] represented by Local 245” and that “when a satellite building located outside the immediate confines of the Research and Engineering Center but within a reasonable distance went into operation, employees [sic] represented by Local 245 UAW would be assigned all skilled maintenance and janitorial work in the areas of the building occupied by hourly personnel such as shop floors, cribs, shipping and receiving and like areas.” Int. Ex. 6; *see* Tr. at 335:5–337:24. Since the 1982 letter was drafted, approximately 18 new buildings have been added to the R&E Center; in each instance Ford has automatically recognized Local 245 as the representative of the skilled maintenance workers at those facilities, and the work has been integrated into Ford and Local 245’s maintenance model. Tr. at 337:21–339:10. Similarly, when the NMPDC building was moved from Dearborn to Allen Park, it remained in the unit. Tr. at 338:23–339:8.

A 1964 Letter of Understanding entitled “Definition of Bargaining Unit at Research and Engineering Center” is included in the Master CBA. It empowered a joint Ford-UAW committee, presided over by an Umpire, to provide definition regarding the scope of the unit. *See* Int. Ex. 15(d). The letter did not speak to the geographic scope of the unit. Tr. at 331:20–332: 1. Rather, the letter responded to concerns about how to define Local 245’s functions, i.e., “what do UAW workers do and what do excluded [workers] do.” Tr. at 331:4–6. Thus, the letter created a contractual process for resolving disputes “across all divisions that are represented by 245[]” about “what work do [the] skilled trades do.” Tr. at 331:20–25. The letter also states that Ford has “no intention of altering the composition of the Bargaining Unit by reassigning work to excluded employees that has been performed traditionally and exclusively by employees represented by the UAW at the Center.” Int. Ex. 15(d).

IV. When Ford Acquired the DTF It Decided to Insource Maintenance at the Facility to Local 245 Because It Was Contractually Obligated to Do So.

Wind tunnels are vehicle test facilities and thus part of the R&E Center; as such, Local 245 has historically represented all the tradespersons who maintain every Ford-owned and -operated wind tunnel. Tr. at 354:22–355:20. Wind tunnels are part of the R&E Central Staff (the blue buildings in Int. Ex. 2). Tr. at 304:10–15. The first Ford wind tunnels (tunnels 1 & 2) opened in Dearborn in the 1950s or early ‘60s, and were maintained by Local 245 throughout their lifespans. Tr. at 354:25–355:9. In the 1970s, Ford added three more tunnels in Dearborn (tunnels 3–5), and Local 245 has maintained those wind tunnels from the time of their opening until the present day. Tr. at 304:10–15, 355:10–20; *see* Int. Ex. 2.

Around 1999, Ford contracted with a company called Sverdrup, which planned to construct and operate three wind tunnels in Allen Park, Michigan. Tr. at 355:23–357:4. Those tunnels were constructed at the DTF. Tr. at 357:9–11. The DTF is located walking distance from three R&E Center Buildings serviced by Local 245. Tr. at 360:16–25.

A series of outside contractors provided the skilled maintenance work at the DTF for Sverdrup. Tr. at 58:15–63:3, 358:6–8; GC Exs. 16–18, 25–26; Int. Ex. 8. Other automobile and aerospace companies also hired Sverdrup to perform wind tests at the facility. Tr. at 139:11–22, 254:3–6. Because the DTF initially was not Ford-owned or -operated, Local 245 did not believe Ford was required under the CBA to assign the skilled maintenance work at these facilities to the local. Tr. at 357:25–358:5. Nonetheless, Ford began shifting wind tests into the DTF, leading to the closure of tunnels 1 and 2 in 2004. Tr. at 358:9–19. As a result, Local 245 lost skilled maintenance work it had previously performed. Tr. at 358:20–23.

In December of 2014, Local 245 learned that Ford had purchased the DTF facility from Sverdrup, but was continuing to use outside contractors to provide skilled maintenance. Tr. at

358:24–360:8. At that point, maintenance was provided by Jacobs Industrial Services, Inc. (Jacobs). Tr. at 571:1–4; GC Ex. 17.

Because the DTF was now a Ford-owned research and engineering facility doing work solely for Ford, Local 245 believed that its members were now contractually entitled to the skilled maintenance work there. Tr. at 360:9–15. Paul Vergari, Local 245’s chairman, decided to raise the issue with Ford during the upcoming negotiations for the 2015 CBA rather than through the grievance procedure because he believed such an approach would be more amicable and more likely to contribute to industrial peace. Tr. at 362:1–363:23.

Through an information request to Ford, Local 245 learned that Ford was paying approximately \$4.8 million per year to maintain the DTF. Tr. at 364:3–11. This money was divisible into two buckets: ~\$2 million paid to full-time Jacobs employees who provided some of the steam engineering and electrical work at the facility, and another ~\$2.8 million paid to 32 outside (non-Jacobs) vendors who Jacobs hired to provide the remaining maintenance needs for the facility. Tr. at 364:11–365:1, 465:25–466:12; Int. Ex. 8. The \$2.8 million paid to outside contractors included, according to Local 245’s estimates, work that would have been performed in-house if Local 245 were maintaining the facility that would add up to the equivalent of 10.6 full-time positions. Tr. at 370:21–373:12; Int. Ex. 9; *see* Tr. at 575:14–15 (Ford manager Joe Vicari “saw a lot of contract work go in and out of the building” while it was managed by Jacobs). The contracted work included numerous tasks relating to the maintenance and repair of heating and refrigeration equipment. Tr. at 373:19–377:7 (explaining that five of the 32 jobs that Jacobs assigned to outside vendors were related to refrigeration or heating repair or maintenance). Additional work that Jacobs subcontracted out included carpentry, millwrighting, plumbing, and electrical work. Tr. at 373:13–18.

The 2015 CBA negotiations resulted in Ford deciding to insource the skilled maintenance work at the DTF by assigning it to Ford employees who would be represented by Local 245. Tr. at 362:19–363:8; Int. Ex. 16(d). In negotiations, Ford claimed to be concerned about whether Local 245 could perform the work economically and efficiently. Although Local 245 believed it was contractually entitled to the skilled maintenance work at the DTF regardless, Local 245 agreed to condition the insourcing on its ability to perform the work economically and efficiently because it was confident that it could clear the “small hurdle” of proving that its members could do the work as well as, and cheaper than, Jacobs. Tr. at 363:9–23.

V. Ford Hired Four Jacobs Employees After No UAW Candidates Applied, and the New Hires Were Informed that They Were Employed in the Larger R&E Center Unit, Not Just at the DTF.

During the ensuing discussions about the details of the insourcing, Ford indicated an interest in hiring some of the steam engineers and electricians who worked for Jacobs at the DTF. Tr. at 377:13–20. Ford was unable to do so, however, unless it first searched for internal UAW candidates, as required by Appendix N of the master CBA. Tr. at 377:21–378:1; *see* Int. Ex. 15(c). Appendix N requires that new skilled trades work anywhere in the Ford system be offered through a detailed multi-step process to any laid off or displaced UAW tradesperson anywhere in the country before authorization can be given to hire an outside candidate. Tr. at 378:2–24; Ex. 15(c) at pp. 236–41. Ford completed that process, and determined that no UAW candidates desired the open positions. Tr. at 378:25–383:18 (describing the hiring process); Int. Exs. 10–11 (documenting the hiring process). Having complied with Appendix N, Ford proceeded to interview the former Jacobs employees, ultimately hiring four of them: electrician John Kurzawa, electrician Carl Wynn, steam engineer Kris Peters, and steam engineer Jesse Miller. Tr. at 383:6–

384:12; Int. Ex. 11 at 4. A fifth Jacobs employee, Jason Ricks, was not hired. Tr. at 74:24–75:1, 171:17–21.

The former Jacobs employees were interviewed around March of 2017. Tr. at 114:7–12, 184:1–2, 239:10–13. At the interviews, Ford referred the employees to Mr. Vergari, in his capacity as Local 245 chairman, for more information about job benefits and practices. Tr. at 115:20–22, 240:17–241:3, 406:15–407:6. The interviewees spoke with Mr. Vergari, who informed them that as new hires they would begin at the bottom of the seniority ladder; he also informed the interviewees that they would be susceptible to being bumped from the DTF by higher-seniority members of their trade. Tr. at 407:19–408:12; *see* 116:23–117:2,⁵ 135:7–18, 189:2–12, 257:3–11. And Mr. Vergari informed the interviewees that they would be subject to overtime equalization, which would result in their working across the various R&E Center facilities. Tr. at 407:16–18; *see also* Tr. at 134:6–13. When the former Jacobs employees received offer letters from Ford, the offers were for employment “at the Ford Land/Research & Engineering Center” and made no reference to the DTF. GC Ex. 2–9. Thus, prior to accepting a position at Ford, the interviewees had been informed that they were likely to be displaced from the DTF and that they should expect to work at many of the 58 buildings in the R&E Center.⁶ *See* Tr. at 202:13–203:10.

⁵ In his direct examination, Mr. Peters testified, in response to a series of leading questions, that he believed he was protected from being bumped for 1 year and that he received this information from Mr. Vergari. Tr. at 117:9–18. On cross examination, Mr. Peters explained that he developed his impression of the 1-year guarantee from more indirect comments by his manager (as opposed to Mr. Vergari). Tr. at 154:14–23. Mr. Vergari testified squarely that he did not guarantee anyone that they would not be bumped for an entire year. Tr. at 408:10–12.

⁶ Mr. Vergari again discussed shift-bumping, seniority, and overtime equalization with the former Jacobs employees during their new-hire orientation on their first day of work at Ford. Tr. at 419:1–21. That same day, Mr. Vergari also gave each interviewee a flash drive with the local and master CBAs between UAW and Ford. Tr. at 133:13–134:1.

VI. Since the Insourcing, Ford Has Overhauled the Processes for Maintaining the DTF, Required Ongoing Training Between DTF-Based Staff and Other Local 245 Members, and Is Actively Transitioning the Facility into the Local 245 Maintenance Model.

During Mr. Vergari's discussions with Ford leading up to the transition, he discussed the staffing of the DTF with Ford HR Manager Keith Tafelski and Ford Maintenance Operations Manager Joe Vicari. Tr. at 386:5–7. In those discussions, it was agreed that Ford would staff ten full-time skilled tradespersons at the DTF. Tr. at 386:8–25, 428:5–429:7, 459:1–4, 576:5–11. Indeed, Ford Land's formal budget for fiscal year 2017 budgets for ten full-time Local 245 skilled tradespersons to be staffed at the DTF. Tr. at 576:21–577:17, 579:9–581:14; Resp. Ex. 1. The budget was approved both by the chairman and the operating committee of Ford Land. Tr. at 577:18–578:3. However, Ford did not immediately staff all 10 budgeted tradespersons at the DTF in order to allow time for cross-training, to decide which trades most needed to be staffed at the facility and what work could be handled best by mobile crews, and because the entire R&E Center was "running full bore . . . working more overtime than I've ever seen in my 29 years, and so to staff it at 10 heads would be difficult to do" Tr. at 386:22–25 (Vergari); *see also* Tr. at 581:15–582:10 (Vicari) ("Right now we're very—we're at a very high peak workload right now."), 583:20–584:11.

The maintenance transition from Jacobs to Local 245 became official on April 24, 2017. Tr. at 384:4–5. In addition to the four former Jacobs employees Ford hired, it also transferred two Local 245 steam engineers, George Dusaj and Carl Smith, to the DTF. Tr. at 384:10–14. When Mr. Dusaj started, the former-Jacobs steam engineers were at orientation, so he performed all steam engineering work himself during his first few days. He did not encounter any tasks he was incapable of performing, although he did require basic orientation to learn his way around the large building. Tr. at 421:12–16, 482:23–7.

The staff shortage resulting from having only six skilled tradespersons staffed at the DTF has been met by long overtime hours and by extensive work by mobile Local 245 members. Tr. at 424:15–17, 583:7–584:8, 584:12–25. The former Jacobs employees have experienced a significant increase in the overtime they work at the DTF since Ford took over. For example, Mr. Peters now works 16 additional hours of overtime every week. Tr. at 154:1–4. Mr. Kurzawa works between 10 and 26 additional hours per week. Tr. at 275:14–19. Local 245 members who have worked or trained at the DTF testified that the facility is understaffed with only six skilled tradespersons stationed there, Tr. at 492:18–493, 542:4–17, as did Mr. Vicari, Tr. at 572:17–18, 575:3–8. Ford has “always” anticipated resolving the problem by shifting to a seven-day operations model and assigning additional tradespersons to the DTF before January 1, 2018. Tr. at 585:8–586:6.

Meanwhile, numerous Local 245 skilled tradespersons have been performing significant amounts of maintenance work at the DTF. Tr. at 166:4–11, 209:23–210:7. When these tradespersons report to the facility, they typically report to one of the six tradespersons stationed there and work with them as needed to complete their tasks. Tr. at 210:7–21, 219:8–220:3; *see also* Tr. at 167:14–168:1. The work being performed at the DTF includes millwrighting, carpentry, plumbing/pipefitting, and truck repair. Tr. at 210:11–17, 395:16–396:4, 406:9–13, 488:9–14. Among other tasks, mobile tradespersons have revamped a rollup door to comply with Ford safety specs, Tr. at 210:22–211:4, 487:11–18, fixed cranes, Tr. at 211:5–12, inspected floor hoists, Tr. at 395:21–22, maintained high-low vehicles, Tr. at 395:23–25, and repaired a water main break, Tr. at 408:13–25, 602:18–603:12.

Local 245 tradespersons classified as RMIs (Refrigeration Maintenance and Installation technicians) have also been working at the DTF. Tr. at 210:16–17, 487:19–23, 509:16–17. The

RMIs' work includes the maintenance and installation of heating and cooling equipment. Tr. at 487:24–488:3, 505:2–16, 507:5–15 (describing the difference between RMIs and steam engineers). Among other tasks, a team of two RMIs has spent two weeks—with at least another two weeks to go—inspecting every piece of refrigeration and cooling equipment at the DTF to ensure compliance with Ford's safety standards. Tr. at 211:20–212:14, 509:20–510:5, 511:13–22. These RMIs have also been instructed to train the former Jacobs employees on how to maintain heating and cooling equipment to Ford standards. Tr. at 511:8–13; Int. Ex. 17 (email from Ford management stating that RMIs Mike O'Malley and Len Watson would be assigned to the DTF to do combustion safety work and "teach Jesse [Miller] and an electrician" how to do such work). The RMIs doing the combustion safety work actively work with DTF-stationed employees Messrs. Miller and Kurzawa. Tr. at 211:24–212:17, 218:1–8, 254:14–255:9, 511:24–512:5.

Local 245's original estimate of the amount of skilled maintenance work that Jacobs subcontracted, but that Local 245 could perform in-house, *see* Int. Ex. 9, has proven conservative. Tr. at 399:2–11. In other words, Local 245 is now doing an even greater share of the DTF maintenance work than it originally anticipated. Much insourced work would be classified as "general building maintenance" as that term was defined in the CBA between IUOE Local 324 and Jacobs. Tr. at 405:11–406:13, 433:5–18; *see* GC Ex. 18, Art. I, Section 2 (defining "general building maintenance" to include "preventive maintenance activities, and repairs of existing building components").

The geographic proximity of several other R&E Center buildings to the DTF makes Local 245 especially able to respond immediately to emergencies such as the water main break discussed above, because the nearby facilities house numerous skilled tradespersons such as plumbers, millwrights, welders, steam engineers, and electricians. Tr. at 434:20–435:21, 589:12–15.

Similarly, when tradespersons stationed at the DTF require additional assistance either within their trade or from another skilled trade, they can call for such assistance as needed. Tr. at 486:8–14.

Prior to the transition, UAW and Ford negotiated a “Launch Agreement” to guide the training component of the transition process during its first year. Tr. at 385:1–12, 387:19–388:1; GC Ex. 28. By its plain terms, the Launch Agreement applies only for one year. GC Ex. 28 at 1 (document describes itself as a “one year ‘Launch Agreement’”). Among other things, the Launch Agreement addresses shift-bumping at the DTF during the first year. It permits bumping by tradespersons staffed elsewhere, but only once the would-be bumper has completed a training session at the DTF and the training documented in a “versatility matrix.” Tr. at 390:15–391:16; GC Ex. 2 at 2.

The Launch Agreement also calls for weekly meetings between Local 245 and Ford to implement the transition. GC Ex. 28 at 1. These meetings have been ongoing, and are attended by Mr. Miller, one of the former Jacobs employees. Tr. at 204:20–205:1. They are also attended by a contractor-supervisor, and by Eric Gerling, a higher-ranking Ford-employed superintendent. Tr. at 204:22–205:9, 394–95. Gerling is in charge at the meetings from management’s side. Tr. at 468:10–24. The transition is the central topic of these meetings, and Mr. Miller relays the information he learns to the other employees stationed at the DTF. Tr. at 205:17–206:6, 266:12–21, 395:15–396:4.

The former Jacobs employees were assigned to train the transferred Local 245 members once the transition began, and the training consisted of the transferees shadowing the former Jacobs employees to become acquainted with the equipment and layout at the DTF. Tr. at 483:17–484:25. No new tools were required and the machinery at the DTF is similar to the machinery elsewhere in several other R&E Center buildings, including the other wind tunnels Local 245 maintains. *Id.*

see also Tr. at 485:23–25. This training was primarily for developing “systems familiarity” and did not require the Local 245 transferees to use new tools, techniques, or processes. Tr. at 136:4–9, 217:2–10, 217:17–25, 430:11–18, 431:24–432:5, 483:17–484:25. The training was neither greater nor lesser than what a skilled tradesperson would expect when beginning work at a new facility. Tr. at 485:6–22.

This shadowing process continued until approximately July of 2017. Tr. at 484:16–18. Then, in August of 2017, the skilled tradespersons stationed at the DTF, including the Local 245 transferees, began providing similar, albeit more abbreviated, training to other Local 245 members. Tr. at 135:19–12, 213:10–215:4, 488:15–489:11, 544:4, 551:6–7. The transferees were informed from the outset that once they completed their own training, they would be assigned to provide such training to others. Tr. at 488:18–20. Each training lasts between a few days and two weeks. Tr. at 155:21–24, 214:5–12, 392:3–5, 415:9–11, 430:11–18, 431:24–432:5, 490:25–491:14, 525:20–22, 551:8–10. The “students”—who are certified and licensed steam engineers and electricians—function as a second pair of hands, assisting with repairs, maintenance, and other tasks. Tr. at 136:21–137:7, 155:21–24, 392:3–6, 539:21–540:7. The training is what a knowledgeable and licensed tradesperson would expect when orienting to a new building, i.e., systems familiarity training that explains the location and quirks of individual pieces of equipment and systems at the facility. Tr. at 489:21–490:20, 526:5–19, 527:21–528:5, 541:15–24, 551:25–553:13. The “students” sometimes suggest their own ideas for how to improve processes or how to better complete assigned tasks. *See* Tr. at 540:14–541:14 (“trainee” Emanuel Dan suggested obtaining materials for a project from a centralized R&E Center parts and materials depot).

Steam engineers Kris Peters, Jesse Miller, and George Dusaj, have all trained other steam engineers. Tr. at 136:10–12, 213:4–11, 489:12–18. At least 13 steam engineers had been trained

in this manner as of October 25, 2017. Tr. at 409:10–411:18, 596:18–23; Int. Ex. 13. And approximately 9 electricians had been trained by around that time. Tr. at 414:11–415:17; Int. Ex. 14.⁷ It is important to Ford that the number of DTF-trained tradespersons grows rapidly, Tr. at 597:1–20, and all mobile electricians have been informed that they are expected to complete the training. Tr. at 538:24–539:1. Once an electrician or steam engineer has completed the training, he or she is eligible to work overtime at the DTF, and this has occurred. Tr. at 417:12–20. For example, steam engineer James Muhammad did an overtime shift at the DTF, Tr. at 492:7–14; 528:13–24. And electrician Gerald Maynard, a mobile electrician, responded to a work order at the DTF when none of the staffed electricians were available to resolve the issue even *before* he completed his training. Tr. at 550:2–23.

As noted above, the Launch Agreement permits shift bumping of the employees currently assigned to the DTF by any trained higher-seniority member of the same trade. Any trained steam engineer or electrician who requests a shift change would likely displace one of the former Jacobs employees because the former Jacobs employees are the lowest seniority members of their respective trades in Local 245. Tr. at 391:14–392:15, 393:17–394:11. Mr. Vergari therefore anticipates that some former Jacobs employees will be displaced in December 2017. Tr. at 391:14–392:15. No bumping had occurred as of the time of trial. That is because the only other bumping period since the transition occurred was in early August, at which point very few Local 245

⁷ At trial, it was pointed out that some of the nine electricians listed in Intervenor’s Exhibit 14 have dates next to their names showing when they were trained, and others do not. Tr. at 415:6–11. Mr. Vergari explained that he received the document in response to a request he made to Ford superintendent Eric Gerling for a list of all trained electricians. Tr. at 414:20–415:3, 429:10–430:430:2. Mr. Vergari also testified that at least two of the five electricians who do not have dates next to their names have personally informed him that they completed their training. Tr. at 418:6–16.

tradespersons (approximately three) had completed the training at the DTF—and none of those three opted to exercise a shift bump. Tr. at 391:19–21, 392:23–393:12.

There has been a major new emphasis on safety at the DTF since the transition. Tr. at 396:1–398:10, 422:4–423:25, 454:4–15. Prior to the insourcing, Jacobs was not complying with Ford’s stringent safety standards; Local 245 members have “[f]ound] so many things that are not up to Ford standards and nobody there . . . understood what Ford standards were.” Tr. at 456:7–10; *see also* Tr. at 512:20–513:7 (describing combustion safety standards that Jacobs was not meeting). The former Jacobs employees now receive emails from Ford that go to all Local 245 tradespersons—emails which they did not receive when they worked for Jacobs—advising them of Ford safety standards. Tr. at 142:18–143:19, 215:21–216:6. Two former Jacobs employees have received personalized hands-on training on Ford combustion safety standards—information those employees had not previously received. Tr. at 211:20–212:4, 218:1–8, 254:7–255:9, 514:12–15; Int. Ex. 17. Each former Jacobs employee also attended a roughly week-long new-hire orientation at which safety issues were discussed in detail. Tr. at 215:17–20, 266:25–267:2, 419:25–420:23. They have also each received separate “arc flash” training on avoiding electrical arcs. Tr. at 215:11–15, 267:8, 421:17–25. Both the orientation and the arc flash training were attended by other members of Local 245. Tr. at 419:13–16, 422:1–3.

Mobile skilled tradespersons have observed that DTF was not in compliance with Ford rules requiring that all equipment have placards describing how to shut the equipment down before performing work on it. Tr. at 396:1–397:11, 397:20–22. These placards are particularly important because they allow skilled tradespersons who are not staffed in the building, such as mobile crews and overtime fill-ins, to maintain the equipment efficiently and safely. Tr. at 397:12–19. The

placarding process involves collaboration between mobile Local 245 members and the six individuals staffed at the DTF. Tr. at 398:1–11.

As discussed above, the CBA provides for overtime equalization within each trade across all of the facilities at the R&E Center. Accordingly, some employees stationed at the DTF have worked overtime at other facilities, including steam engineer George Dusaj. Tr. at 424:9–11, 493:5–14. The three witnesses called by the General Counsel admittedly have not worked overtime at other facilities. Mr. Vergari testified as to the likely reason why this has occurred: The constant need for overtime work at the DTF has resulted in the DTF-based employees being offered large amounts of on-site overtime such that they are rarely “next-up” on the equalization list for overtime opportunities that arise at other facilities. Tr. at 424:12–425:1. This volume of overtime work being done by the employees staffed at the DTF is a symptom of the facts mentioned above, i.e., that the DTF is temporarily understaffed and that the overall amount of overtime being worked throughout the R&E Center is at the highest level Mr. Vergari has ever witnessed. Tr. at 386:23–25, 426:13–18. Some of the former Jacobs employees have nonetheless been *scheduled* to work overtime at other facilities but have had their schedule changed at the last minute. Tr. at 425:1–12.

Since insourcing, Ford has begun to transition the DTF from Jacobs’ computer work order system, which is called CWorks, to the system used by the rest of the R&E Center, which is called Service Insight. Tr. at 203:17–22. The transition did not begin immediately because a new version of Service Insight was released shortly after the insourcing began, causing Ford to wait until the new software was up and running before starting the transition. Tr. at 400:12–401:4, 403:18–404:6. The software transition is now actively proceeding, but involves a time-consuming process of mobile skilled tradesman from Local 245 recording information about equipment at the DTF

that needs to be logged into Service Insight. Tr. at 203:17–204:5, 404:7–19, 469:13–17. Mr. Kurzawa testified that transitioning from one computer work order system to another is a process that has taken years to complete during past software transitions at the DTF. Tr. at 256:9–15.

Part of the transition to the Ford/Local 245 labor model involves ensuring that employees primarily perform work within their trade. Under Jacobs, skilled tradespersons regularly performed the work of other trades. Tr. at 208:8–24. With the insourcing, this is changing. For example, Mr. Kurzawa, an electrician, acknowledged that, prior to the transition, he sometimes had to do the work of a steam engineer—including covering entire shifts for steam engineers. Tr. at 271:22–273:11; *see also* Tr. at 262:11–22, 277:7–9. Since the transition, this does not occur. *Id.*

PROCEDURAL HISTORY

The Charging Party, IUOE Local 324, requested recognition from Ford and demanded that Ford bargain with it as a successor employer on April 13, 2017. GC Ex. 12. Ford refused and informed IOUE Local 324 that Local 245 represented any Ford-employed maintenance workers at the DTF. GC Ex. 13. IUOE Local 324 filed charges against Respondent Ford Motor Company, alleging a violation of Section 8(a)(5), on May 3, 2017. The General Counsel issued a complaint on July 26, 2017. The complaint listed Local 245 of the UAW as an Interested Party, and alleged that Ford violated Section 8(a)(5) by refusing to bargain with the Charging Party. The complaint does *not* allege that Ford violated the National Labor Relations Act (“the Act” or “the NLRA”) by unilaterally changing the terms and conditions of employment. In fact, during a conference call with Judge Goldman on November 1, the General Counsel specifically affirmed that it was not alleging any unilateral change violations.

A hearing was held in Detroit on November 6 through November 8. At the hearing, the International Union, UAW, and its Local 245 orally moved to intervene because, if the charges against Ford are upheld, Ford will be required to withdraw its recognition of Local 245 as the bargaining representative of the employees staffed at the DTF. The motion was granted. Tr. at 22:12–23:15.

Judge Goldman ordered that briefs to be filed by December 13, 2017. UAW filed an unopposed motion requesting that the briefing deadline be postponed to December 22. The motion was granted.

ARGUMENT

There are several reasons why the charges against Ford should be dismissed. First, as explained in Section I below, this case should not be analyzed using the successorship or accretion tests because Local 245 is contractually guaranteed the skilled maintenance work at Local 245. Under Board law, the analysis should end there. Alternately, if this case is examined under a successorship framework, Ford is not a successor for three separate and independent reasons as discussed in Section II, namely: (1) the unit is larger than the General Counsel acknowledges; (2) there is no substantial continuity between the predecessor unit and the unit as operated by Ford; and (3) Ford has not yet assigned a substantial and representative complement of tradespersons to the DTF. Finally, as explained in Section III, even if Ford is a successor, the four former Jacobs employees assigned to the DTF have accreted to the larger Local 245 unit.

I. There Is No 8(a)(5) Violation Because the Work at Issue Here Is Contractually and Lawfully Guaranteed to Local 245.

A. Before conducting an accretion or successorship analysis, the Board must first consider whether the work at issue has already been lawfully guaranteed to the UAW under a collective bargaining agreement.

A successorship or accretion analysis is inappropriate here because the skilled maintenance work at the DTF is lawfully guaranteed to the UAW under the Ford-UAW collective bargaining agreements. “It is axiomatic that when an established bargaining unit expressly encompasses employees in a specific classification, new employees hired into that classification are included in the unit. This inclusion is mandated by the Board’s certification of the unit or by the parties’ agreement regarding the unit’s composition.” *Gourmet Award Foods*, 336 NLRB 872, 873–74 (2001). Accordingly, the Board has repeatedly held that it will not conduct an accretion analysis to determine whether newly hired employees are members of a pre-existing unit in situations “involving functionally described units” when the new employees are hired to do work described in the collective bargaining agreement. *John P. Scripps Newspaper Corp.* (“*The Sun*”), 329 NLRB 854, 860 (1999). Rather, when an employer adds new employees who “perform job functions similar to those performed by unit employees, as defined in the unit description, *we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work.*” *Id.* at 859 (emphasis added). Once that presumption applies, “the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.” *Id.*

When new employees accept positions covered by a contractually agreed upon recognition clause, the accretion test is “ill-suited” to determining the representational status of the new employees. *Id.* at 860. That is because requiring that the new employees share an “overwhelming community of interest”—as required for an accretion—“would effectively re-write for the parties the unit description.” *Id.* Doing so “would undermine the integrity of both the bargaining process itself and the existing bargaining unit.” *Id.*; *accord Premcor, Inc.*, 333 NLRB 1365, 1366 & n.5 (2001).⁸

The Board has applied this analysis in numerous circumstances. For example, in *Gourmet Foods*, the bargaining unit description included all “drivers and warehousemen” at a particular facility. The Company subsequently contracted with a temp agency to use temporary warehousemen at the facility. *Id.* at 873. The Board held that the temporary warehousemen were automatically included in the unit, despite being jointly employed by the Company and the temp agency, because they were “included in the unit described in the parties’ collective-bargaining agreement.” *Id.* In so holding, the Board rejected the suggestion that it should have conducted an accretion analysis: “Although the Respondent may not have contemplated obtaining its warehousemen from suppliers such as those involved in this proceeding, the unit definition provides no basis for excluding those employees from the established unit. Thus, we disagree with our dissenting colleague’s view, also urged by the General Counsel in his supplemental statement of position, that the accretion analysis is appropriate here.” *Id.* at 874.

⁸ These cases, like some other cases discussed in this section, arise in the unit clarification context rather than the unfair labor practice context. The different procedural contexts are irrelevant. *See The Sun*, 329 NLRB at 859 (noting that the standards for determining the proper unit are the same in either context and that “[c]larification of the unit through the unfair labor practice proceeding [i]s . . . entirely appropriate” (quoting *NLRB v. Bay Shipbuilding*, 721 F.2d 187, 191 (7th Cir. 1983)) (last alteration in original)).

The same analysis applies in the multi-facility context where the question concerns whether employees at a new facility are members of a pre-existing bargaining unit. *See Tweddle Litho, Inc.*, 337 NLRB 686 (2002). *Tweddle* involved a representational dispute at a “new facility” that the employer leased at a location near its existing, unionized, facility. *Id.* at 686. The question before the Board concerned whether the dispute should be deferred to arbitration. After concluding that the relevant issues should be decided by the Regional Director rather than an arbitrator, the Board remanded for the Regional Director to address “whether the new employees are to be accreted to the contractual bargaining unit *or added because they perform the same functions that historically have been performed by unit employees.*” *Id.* (italics added); *see also id.* at 686 n.1 (citing *Premcor* as the authority for the second question to be considered)).⁹ The Board’s remand therefore permitted the Regional Director to find that the new facility was within the bargaining unit based on an analysis whether the bargaining unit was functionally defined and extended to the new facility, without having to necessarily conduct an accretion analysis.

In fact, when a bargaining unit is expressly described in multi-facility terms, the Board has held that an accretion analysis is not necessary, even if the unit work is *not* functionally defined, so long as the facility in question is within the unit’s geographical jurisdiction. *See Tarmac Am., Inc.*, 342 NLRB 1049 (2004). In *Tarmac*, the employer transferred a forklift operator from a non-union facility to what the Board described as a “newly created” facility that

⁹ The Board has expressly declined to hold that the *The Sun* does not apply in a multi-facility context. In *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001), the Regional Director distinguished *The Sun* from the facts at issue in *Archer* on the grounds *both* (1) that *Archer* did not involve a functionally described bargaining unit *and* (2) because *Archer* involved a new facility. In denying review, the Board expressly relied on the former rationale and eschewed any reliance on the latter. *Id.* at 673 n.2.

was within the geographical area covered by a multi-site CBA between the employer and IUOE, Local 487. Although there were no other IUOE members working as forklift operators in the facility, the Board held that the employee was included in the larger geographical unit, without conducting an accretion analysis, because “the bargaining unit description” included forklift operators at any facility within the geographic jurisdiction of the CBA. *Id.* at 1050.

Accordingly, the case did “not present a scenario in which an accretion analysis would be appropriate.” *Id.* at 1050 n.5. Furthermore, because the unit was geographically defined and encompassed the facility in question, the *Tarmac* Board found it unnecessary to consider whether the unit’s work was defined functionally as had been the case in *The Sun* and *Premcor*. *See id.*

The same analysis, focused on the geographic scope of the contractually agreed bargaining unit, applies when there is a potential successorship issue as a result of the employees in question having previously been represented by another union under a predecessor employer. For example, in *Ports Am. Outer Harbor*, 32-CA-110280, 2016 WL 7033073, (Dec. 1, 2016), Judge Miller Cracraft applied the *Tarmac/Sun* analysis to a dispute between two unions over who represented employees working at two ship berths. There, a potential successor employer acquired the work at the two berths from a predecessor employer, and the predecessor’s union claimed that it was still entitled to the work under successorship principals. The Judge agreed with the General Counsel’s position (in that case) that “once a determination is made that the new or transferred employees perform unit work and properly belong to the [successor employer’s pre-existing] unit, no accretion analysis is necessary.” *Id.*

It makes sense that the *Tarmac/Sun* analysis applies regardless of whether the predecessor’s employees were previously represented or not. In both circumstances, denying the work to the union that represents the successor employer’s employees “would effectively re-

write . . . the unit description” for which the successor employer and its union have bargained. *The Sun*, 329 NLRB at 860. And in both circumstances, the new employees will be represented by a union for which they themselves did not vote. Thus, just as it is proper to include previously unrepresented employees in the successor’s bargaining unit in order to honor the bargained-for scope of that unit, so too it is proper to include previously represented employees in such a unit.

It is true that previously represented employees have expressed a preference to be represented by a different union when they worked for the predecessor employer. But that decision was, of course, made before they began working in a setting in which another union already has an established bargaining relationship with the successor employer that covers the exact work or facility in question. Thus, the employees’ prior preference as to their designated representative is incomplete and may well not represent their feelings about representation under the successor employer.¹⁰

Similarly, the successorship test would not apply in the relevant and analogous Section 10(k) context. If either union here had threatened economic action against Ford, this case would be analyzed as a Section 10(k) jurisdictional dispute, not as an accretion or successorship case. Under Section 10(k), of course, the scope of the current employer’s certified unit, and the employer’s preference as evidenced by its bargaining history, would be central factors. *See, e.g.,*

¹⁰ Here, for example, if the former Jacobs employees are not incorporated into Local 245, they will not have the ability to work overtime at other facilities. Nor will they receive any of the other professional benefits that Local 245 members enjoy such as increased job security, transfer opportunities across the R&E Center, and access to expert team leaders and cross-training at other facilities. The former Jacobs employees will not be able to bargain for such inherently multi-facility benefits from Ford. It is easy to imagine that these possibilities may well impact the former Jacobs employees’ feelings about which union they would prefer to be their designated representative.

Am. Bank Note Co., 316 NLRB 177, 179–81 (1995) (discussing the 10(k) factors). Those same considerations are central to the *Tarmac/Sun* analysis, which looks to the scope and nature of the bargaining unit that the successor employee and the incumbent union have historically negotiated. Holding the successor employer and its union to the demanding accretion/successorship standard merely because the successor’s union has not threatened economic action, would create an incentive for that union to protect its work through more militant means. Such a result would be anathema to the Act’s “overriding policy” of ensuring industrial peace to the greatest extent possible—the same policy that undergirds successorship and accretion principles. *Fall River Dyeing & Finishing Corp.*, 482 U.S. 27, 38 (1987). It would also be contrary to the principle that “[a]mong the primary purposes protected by the Act is the purpose of preserving for the contracting employees themselves work traditionally done by them.” *NLRB v. Int’l Longshoremen’s Ass’n*, 447 U.S. 490, 504 (1980) (internal quotation marks omitted).

There is no good reason why a union with a long-standing bargaining relationship with an employer should not be permitted to preserve the scope of its bargained-for unit multi-facility unit when the employer acquires new employees. That is true whether the employer acquires the new employees from an organized employer or an unorganized one. The *Tarmac/Sun* analysis honors this principle; an accretion or successorship analysis would not. Thus, the Board’s analysis under *Tarmac* and *The Sun* should govern here.

- B. Local 245 is the exclusive bargaining representative of skilled maintenance workers at the DTF because the CBA and bargaining history properly recognize both the multi-facility and functional nature of the bargaining unit.

Under the *Tarmac/Sun* analysis, Local 245 is the presumptive representative of all skilled maintenance workers at the DTF if *either* the unit is multi-facility in nature and encompasses the

DTF (*Tarmac*) or if the unit is described functionally (*The Sun/Tweddle*) and encompasses the maintenance work in question. Both are true here.

First, the bargaining unit is contractually multi-facility in nature. The master CBA explicitly recognizes the R&E Center as a “multi-plant employment location” covered by the contract. Ex. 15(c), at 244. In turn, it is uncontested that of the six subdivisions of the R&E Center identified in the CBA, three of them—including the R&E Central Staff subdivision that encompasses the DTF—are themselves multi-facility campuses in the metro Detroit area. *See* Int. Ex. 2; Tr. at 302:14–15, 303:23–304:2, 305:2–11. If there were any doubt, the 1979 and 1982 letters exchanged between Ford and Local 245 confirm the multi-facility nature of the unit and its automatic extension into new facilities within the R&E Center. The letters reiterate, in no uncertain terms, the parties’ agreement that Local 245 provides the skilled maintenance at any Ford-owned R&E Center facility “in the immediate confines” of the R&E Center campus or “within a reasonable distance” thereof. Int. Ex. 6 (1982 letter); *see also* Int. Ex. 5; Tr. at 321:21–333:18, 334:8–24. Indeed, Local 245 has represented skilled maintenance workers in a multi-facility unit covering all Ford-owned research and development buildings since the unit’s inception in 1942. Int. Exs. 3–4; Tr. at 327:13–328:3, 329:5–23.

The parties’ historical practice is also relevant. Even when there is “no clear and unambiguous contract provision setting forth the parties’ agreement” that a bargaining unit is multi-facility in nature, “it may be evidenced by bargaining history or a pattern of bargaining.” *La. Dock Co.*, 293 NLRB 233, 234 (1989), *enf’t denied on other grounds*, 909 F.2d 281 (7th Cir. 1990).

Here, the multi-facility nature of the unit has been amply demonstrated by historical and contemporary practice. In the 35 years since the 1982 letter was sent, approximately 18 new

Ford-owned buildings have been added to the R&E Center (and others have opened as older buildings were retired, transferred, or repurposed). Tr. at 336:12–17. Local 245 has automatically been acknowledged by Ford as the representative of the skilled maintenance workers at each such facility, including facilities in Allen Park. Tr. at 337:25–339:10. Similarly, the multi-facility nature of the unit is demonstrated by the complete integration of the Local 245 workforce across all the R&E Center facilities—as discussed in extensive detail in the Facts section above, and in the accretion and successorship arguments below. *See supra*, at 4–9; *infra*, at 43–50, 52–55. This integration of the workforce is not merely a matter of operational practice; it is also baked into the local CBA’s equalization of overtime for each trade across the entire R&E Center and the shift-bumping rights that inevitably result in members being regularly reassigned to new facilities. *See* Int. Exs. 16(a), (b); Tr. at 316:19–317:24, 339:11–340:11.

Thus, the unit at issue here is like the one in *Tarmac*. *See Tarmac*, 342 NLRB at 1049. Just like the *Tarmac* unit, the unit here extends to all designated tradespersons working in any facility within a specific jurisdiction: here, the R&E Center “campus” that is spread across four Detroit-area suburbs. As such, when Ford hires employees at the R&E Center (including the DTF), those jobs are automatically included in the bargaining unit “because [the positions are] within the Union’s geographic jurisdiction [and] are included in the bargaining unit.” *Id.* at 1050. Therefore, “this case does not present a scenario in which an accretion analysis would be appropriate.” *Id.* at 1050 n.5. For the same reasons, and as discussed in the prior section, a successorship analysis would be equally inappropriate. Thus, it is not necessary to examine whether the bargaining unit is functionally defined as well. *See id.*

Nonetheless, the unit *is* defined functionally. It represents workers who serve a particular function: skilled maintenance at the R&E center facilities. The master CBA recognizes this by

laying out a list of trades covered by the contract, *see* Int. Ex. 15, Vol. V (Skilled Trades), App’x F. at pp. 180–90, and by stating that the unit services the multi-facility R&E center, as discussed above. Similarly, the 1964 letter included in the master CBA shows that over the years the parties have defined the scope of the unit based on the work performed, with the intent of not “altering the composition of the Bargaining Unit by reassigning work to excluded employees that has been performed traditionally and exclusively by employees represented by the UAW at the Center.” Int. Ex. 15(d).

The parties’ historical practice further demonstrates that the unit is functionally defined. The 1979 letter specifically provides that Local 245 employees “will be assigned to perform the following *functions*”—the first of which is “building maintenance.” Int. Ex. 5 (emphasis added). Local 245’s follow-up letter in 1982 similarly describes the work being performed by Local 245 functionally, saying that it includes “all skilled maintenance.” Int. Ex. 6. That, of course, mirrors what Local 245 does to this day. *See* Tr. at 291:6–8, 293:10–12, 298:8–299:1; Int. Ex. 2.

In this way, Local 245 is like the unit in *The Sun*. That unit was defined “by the work performed” because the CBA identified the unit based on their performance of certain steps in the publication of newspapers. *See* 329 NLRB at 854. Similarly, the members of Local 245 provide specific functions relating to the R&E Center’s larger purpose of developing prototype automobiles: they provide skilled maintenance throughout the development and testing process. By contrast, this case is *not* like the non-functionally defined maintenance unit in *Archer Daniels*, which only referred to employees in certain maintenance classifications “who work at a specific location or address.” 333 NLRB at 675.

It is irrelevant to the multi-facility or functional nature of the bargaining unit that IUOE Local 324 provides the skilled maintenance at certain SMO buildings that would fall within

Local 245's jurisdiction if they were 50% or more Ford occupied. The SMO buildings are merely commercial office buildings owned by Ford Land company that are rented out to assorted tenants. Tr. at 305:2–12, 445:17–446:1, 466:19–467:6. They are not the core R&E Center buildings where design and testing of prototype vehicles occurs—and none of those core buildings in the Center's other five subdivisions have ever been serviced by the IUOE. Tr. at 451:17–18. Indeed, the SMO buildings were not added to Local 245's jurisdiction until 1999, Tr. at 305:2–4, precisely because they are peripheral to the R&E Center's core mission.

Local 245 has an unbroken, decades-long history of representing all Ford-employed skilled maintenance workers throughout the R&E Center. As such, when Ford purchased and began operating the DTF, the maintenance work there contractually belonged to Local 245 bargaining unit. Accordingly, no accretion or successorship analysis is needed here. Instead, the former Jacobs employees presumptively became part of Local 245's bargaining unit when Ford hired them to do skilled maintenance work at the R&E Center.

II. Assuming, Arguendo, That This Is a Successorship Case, Ford Had No Obligation to Bargain with IUOE Local 324 Under the Successorship Test.

A. Local 324 did not previously represent more than fifty percent of the relevant unit because the unit consists of more than six employees.

A successor employer acquires a presumptive obligation to bargain with a union that represented its predecessor's employees only when the unit at the successor is majority-staffed by employees of the predecessor. *See Van Lear Equip., Inc.*, 336 NLRB 1059, 1063 (2001). Here, Ford hired four former Jacobs steam engineers and electricians and assigned them to the DTF along with two long-standing Local 245 steam engineers. Thus, according to the General Counsel, IUOE Local 324 represents a (bare) majority of the bargaining unit because four of the six employees assigned to the DTF are former Jacobs employees.

The General Counsel’s argument fails, because it erroneously treats the unit as consisting of only six employees. Under the CBA between Jacobs and IUOE Local 324, the bargaining unit consisted of “*all* Operating Engineers [i.e., steam engineers in Ford’s terminology] and Electricians, employed by the Company at [the DTF], in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed in the said location and in the performance of general building maintenance.” GC Ex. 18 at 1 (Art. I, Section I) (emphasis added). Local 324’s demand to Ford for recognition and bargaining described the unit in exactly the same terms. *See* GC Ex. 12.

Applying that unit definition here would yield a unit significantly larger than six employees. It is uncontested that, since insourcing, skilled maintenance work at the DTF is performed by a mix of the six tradespersons staffed at the DTF and a revolving cast of Ford-employed mobile tradespersons. Numerous mobile skilled tradespersons from Local 245 have been doing a variety of maintenance work at the DTF including millwrighting, carpentry, plumbing/pipefitting, truck repairs, and inspection and maintenance of the heating and cooling equipment as part of a comprehensive combustion safety review. Tr. at 210:7–211:4, 395:16–394:4, 406:9–13, 487:11–488:14, 509:16–17. Significantly, much of the work performed by these mobile employees is included in the Jacobs CBA’s unit description, i.e., “operation, mechanical maintenance and repair of . . . refrigeration, heating and air-conditioning machinery,” *see* Tr. at 505:2–16, 509:18–510:5, and “the performance of general building maintenance,” *see* Tr. at 405:11–406:13, 433:5–18. It is also uncontested that on any given day, *any* Local 245 skilled tradesperson can be assigned to the DTF to do maintenance work or to respond to maintenance emergencies. Tr. at 319:6–323:15, 349:12–350:9, 522:12–18, 535:10–19, 590:16–

20; *see also*, 408:13–25, 602:18–603:12 (describing Local 245’s response to a plumbing emergency).

Thus, properly conceived, the bargaining unit consists of all 526 skilled tradespersons in the DTF—or at least the 40–45% of those tradespersons who are mobile and therefore most likely to be ordered to respond to work orders at the DTF. At the *very* least, the unit consists of between 16 and 17 employees. That number represents the six employees stationed at the DTF plus the estimated combined 10.6 additional full-time employees’ worth of maintenance work that is performed at the facility by mobile Local 245 members. Tr. at 370:21–373:12; Int. Ex. 9. As noted above, a significant portion of the mobile work is described by the unit description for which the Operating Engineers demanded recognition. *See* Tr. at 373:19–377:7 (identifying DTF maintenance work, which is now performed by mobile Local 245 members, that constitutes refrigeration or heating maintenance and repair); Tr. at 433:3–17 (identifying DTF maintenance work, which is now performed by mobile Local 245 members, that constitutes general building maintenance). And even that 10.6 number has proven conservative; Mr. Vergari testified that in fact mobile Local 245 members have performed even more maintenance work at the DTF than originally estimated. Tr. at 399:2–11

Tellingly, the General Counsel is able to conclude that the unit consists of six employees only by transparently gerrymandering its description of the bargaining unit to describe a unit different than the one for which IUOE Local 324 requested recognition. As noted above, the CBA and IUOE both described the bargaining unit as including “*all* Operating Engineers and Electricians” employed at the DTF by the Company—a description that would include mobile Local 245 tradespersons when they are working at the DTF. GC Exs. 12, 18 (emphasis added). By contrast, the General Counsel contends that the successor unit should consist of “[a]ll *full-time*

and regular part-time operating engineers and electricians employed by the Respondent at the [DTF].” Compl. ¶ 9 (emphasis added). It is only by adding the italicized language to the definition of the bargaining unit that the General Counsel is able to artificially restrict the size of the unit only to the six employees regularly staffed at the DTF and thereby ignore the dynamic staffing model utilized by Ford and Local 245. *See R & M Elec. Supply Co.*, 200 NLRB 603, 615 (1972) (“Where a union had requested recognition for a unit in which it does not have a majority, a violation of Section 8(a)(5) cannot be based upon an ex post facto finding of majority in an appropriate unit for which bargaining had not been requested.”). This attempt to gerrymander the unit is doubly inappropriate in light of the fact that the four employees upon which the General Counsel focuses represent only the barest possible of majorities in its proposed unit, meaning that their majority is destroyed by the slightest expansion of the unit size. And it is even more inappropriate in light of the uncontested evidence that the mobile workforce has regular interchange with the employees staffed at the DTF, including training the DTF-based members, Tr. at 511:8–13, Int. Ex. 17, seeking assistance from DTF-based members while completing work orders, Tr. at 397:20–398:11, 511:24–512:5, and reporting to DTF-based members to coordinate planned work at the facility, Tr. at 210:7–21, 219:13–220:1.

Thus, the General Counsel’s attempt to beg the threshold successorship question should be rejected. Instead, the unit, properly defined, is larger than six employees and therefore IUOE Local 324 never represented a majority of the unit. *See R & M Electrical*, 200 NLRB at 615; *cf. Ryder Sys., Inc.*, 280 NLRB 1024, 1050 (1986) (rejecting, in a successorship case, an employer’s attempt to modify a recognition clause referring to “all” drivers at a particular location to instead describe “all full time” drivers—and stating that the suggested revision “varies unnecessarily from the language of the certification”), *enf’d* 842 F.2d 332 (6th Cir. 1988) (table op.).

B. Under the multi-factor successorship test, the continuity of the predecessor unit has been destroyed.

1. The multi-factor continuity test examines employees' reasonable expectations as to whether their jobs have changed and places weight on whether a multi-facility unit has centralized personnel policy and/or significant interchange.

A successor employer is required to bargain with the union representing its predecessor's employees when "a majority of its employees, consisting of a 'substantial and representative complement,' in an appropriate bargaining unit are former employees of the predecessor and when the similarities between the two operations manifest a 'substantial continuity' between the enterprises." *Van Lear*, 336 NLRB at 1063 (quoting *Fall River*, 482 U.S. at 41–43). The substantial continuity enquiry requires an examination of the "totality of the circumstances" including "whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers." *Fall River*, 482 U.S. at 43. The touchstone of this multi-factor analysis is "whether 'those employees who have been retained will understandably view their job situations as essentially unaltered.'" *Id.* (quoting *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973)).

"Single-location units are presumptively appropriate" in a successorship analysis. *Id.* However, the presumption can be rebutted. The rebuttal analysis "examines a number of factors, including: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any." *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB 689, 690 (2005). The single-

facility presumption is rebutted when the “operational structures and practices” of the new employer significantly “differ” from the predecessor employer’s. *P.S. Elliott Servs.*, 300 NLRB 1161, 1162 & n.4 (1990) (quoting *NLRB v. Burns Sec. Serv.*, 406 U.S. 272, 280 (1972)).

Several examples are illustrative. For example, in *P.S. Elliott*, a cleaning company that employed 175 employees servicing numerous locations purchased a small cleaning contractor that serviced a particular location using eight employees. The successor company hired seven of the predecessor’s eight employees, and those seven employees continued to work at the same location. *Id.* at 1161. The Board concluded that the new employees were not a separate unit with which the successor employer was required to bargain in light of: the size and organizational structure of the successor employer; the centralization of personnel policies; the existence of identical workplace policies and benefits for all employees; the interchange of other unit employees and their transfer and reassignment between various sites over time (even though the predecessor employees themselves had not yet been transferred); the fact that unit employees were “not hired to staff a particular jobsite”; and the assignment of six legacy employees to the newly acquired site at various points either permanently or on a “fill-in” basis. *Id.* at 1162.

In *Jerry’s Chevrolet*, the single-facility presumption was rebutted in an election dispute case. There, four car dealerships were located within walking distance of each other; the central office controlled hiring, firing, and other administrative aspects of the business; a few work tasks were performed in a common facility; and all employees received similar benefits. 344 NLRB at 689–91. The presumption was rebutted even though day-to-day management was provided by facility-specific service managers because those managers had only “minimal local autonomy,” lacked authority to hire or fire, could only recommend discipline, and applied employment policies that were uniform across the facilities. *Id.* at 691; *see also id.* at 689. The factors in

favor of an integrated multi-facility unit also overcame the fact that there was “little employee interchange” across the four facilities. *Id.* at 691.

Similarly, the Board has found the single-facility presumption rebutted where a union sought to represent single-facility units consisting of individual Budget-Rent-A-Car offices in the Detroit area. *See Budget Rent-A-Car Sys., Inc.*, 337 NLRB 884 (2002). There, branch managers did not schedule employee overtime without central authorization and had “little or no input into hiring, terminations, serious discipline, transfers, wage scales, merit wage increases, benefits, or other terms and conditions of employment.” *Id.* at 885. The stores also shared their car fleet inventory, resulting in a “substantial degree of coordination between unit employees from all five stores”; mechanics at one facility serviced trucks from other facilities; and there was “some evidence of both temporary and permanent transfers among the five local market stores.” *Id.*

2. Applying the substantial continuity factors here compels the conclusion that Ford is not a successor employer.

Numerous factors favor a finding that the continuity of the predecessor Jacobs unit has been destroyed. First, as a threshold point, the entire successorship analysis must be informed by the fact that the four former Jacobs employees constitute only the barest possible majority in the General Counsel’s proposed unit. *See Blazer Corp.*, 236 NLRB 103, 110 (1978) (finding it to be relevant, in a successorship context, that the successor employed “only a bare majority of 10 out of 19 employees” who worked for the predecessor); *P.S. Elliott* (finding it relevant that six legacy employees were assigned to work at the new facility with seven predecessor employees). Had Ford transferred only one additional member of Local 245 to the DTF instead of hiring any of the four former-Jacobs employees, there would be no controversy here. Similarly, had a single laid-off UAW tradesperson who wanted a position been identified during the Appendix N process, there would be no controversy here.

Second, the production processes at the DTF have changed dramatically since Ford insourced the work. Because the unit here performs skilled maintenance, the “production processes” continuity factor should examine whether the processes by which the DTF is maintained have changed. They have. It is uncontested that numerous skilled tradespersons employed by Ford now perform skilled maintenance at the DTF on an on-call basis in several trades. Tr. at 210:11–17, 395:16–396:4, 406:9–13, 488:9–14; *see generally* Int. Ex. 1. Under Jacobs, such maintenance was performed by outside contractors on an *ad hoc* basis. As discussed above, it is further uncontested that some of the mobile tradespersons perform refrigeration/heating work and general building maintenance. And it is also uncontested that the mobile tradespersons work and interact with the DTF-based employees when they work at the DTF. Tr. at 210:7–21, 219:13–220:1, 397:20–398:11, 511:24–512:5.¹¹ Other process changes include Ford’s dramatically increased emphasis on safety and its related upgrading of the facility to meet its safety standards—a process being led by mobile staff working in concert with the employees assigned to the DTF. Tr. at 396:1–398:10, 422:4–423:25, 454:4–15, 456:7–10, 512:20–513:7.

Third, the DTF-based employees’ jobs and working conditions have changed in several significant ways. Mr. Kurzawa admitted—albeit reluctantly and only after confronted with his *Jencks* statement—that since Ford took over he is now performing primarily electrical work; previously he also worked entire shifts as a (unlicensed) steam engineer. Tr. at 271:22–273:11; *see also* Tr. at 262:11–22, 277:7–9. Ford has also offered the former Jacobs’ employees the

¹¹ In addition to demonstrating a change in production processes, these facts also demonstrate significant employee interchange, one of the factors the Board must consider in examining whether the single-facility presumption is rebutted. *Jerry’s Chevrolet*, 344 NLRB at 690; *see also Prince Telecom*, 347 NLRB 789, 793 (2006).

opportunity to work massive amounts of overtime beyond what was previously available to them. Tr. at 154:1–4 (Mr. Peters works 20 additional hours per week); Tr. at 275:14–19 (Mr. Kurzawa works 10–26 additional hours per week). In addition, some former Jacobs employees have been scheduled to work overtime at other R&E Center facilities, only to have unexpected issues result in cancellation. Tr. at 425:1–12.¹² The former Jacobs employees have also been assigned a significant new job responsibility: providing systems familiarity training at the DTF both to the two Local 245 transferees and to an ongoing procession of other Local 245 tradespersons. *See supra* at pp. 21–23. Conversely, the former Jacobs employees have themselves received training in numerous forms—orientation, classes, on-site training from mobile tradespersons, and email updates—on Ford safety standards that were either inapplicable or not implemented when Jacobs operated the DTF. *See supra* at pp. 24.

Critically, the training (in both directions) is part of a deliberate process of facilitating interaction and interchange between the DTF-based employees and other members of Local 245. The goal is to ensure that a large proportion of Local 245’s tradespersons are able to work at the DTF as needed, including during overtime shifts. An expected consequence of the training is that the former Jacobs employees will likely be bumped out of the facility in the very near future. Tr. at 391:14–392:15, 393:17–394:11, 587:11–588:20.

The likelihood of being bumped is neither new nor unexpected for the former Jacobs employees. The job offer letters Ford sent them do not even mention the DTF; the letters simply

¹² The only reason the former Jacobs employees have not had more opportunities to work overtime at other facilities is that almost *every* tradesperson throughout Local 245 is working large amounts of overtime at a rate higher than Mr. Vergari has witnessed over the past 29 years. The result is that there has been less need in recent months than normal to assign employees outside their home facilities to equalize overtime across the entire bargaining unit. Tr. at 386:23–25, 426:13–18, 424:12–425:1.

offer “employment at the Ford Land/Research & Engineering Center.” GC Exs. 2–9. *See P.S. Elliott*, 300 NLRB at 1162 (finding no successorship where “[e]mployees are not hired to staff a particular jobsite but are hired based on the overall needs of the company.”); *cf. Van Lear*, 336 NLRB at 1063 (finding continuity for a successor who “unlike *P.S. Elliott Services* . . . hired [employees] for a specific work location”). The former Jacobs employees were told by Mr. Vergari at the time that they interviewed, and again on their first day of work at Ford, that they should expect to be bumped out of the DTF. Tr. at 116:23–117:2, 135:7–18, 189:2–12, 257:3–11, 407:19–408:12, 419:1–21. And since the insourcing began, Mr. Miller has been attending weekly meetings that include Local 245 representatives and Ford managers at which the transition is discussed in detail. Tr. at 204:20–206:6, 394:24–396:4. The fact that these expectations were laid out from the very beginning is certainly relevant to central question of the successorship inquiry, i.e., whether the Jacobs employees should “understandably view their job situations as essentially unaltered.” *Fall River*, 482 U.S. at 43.¹³

Fourth, the DTF employees’ supervision structure has changed. Just as in *P.S. Elliott*, *Budget*, and *Jerry’s Chevrolet*, all hiring and firing decisions for DTF-based employees are made by centralized managers who supervise employees at other facilities as well. Tr. at 348:12–15. Centralized Ford managers are involved in discipline very early on, i.e., at the oral stage of the

¹³ The fact that some of the former Jacobs employees were told by some managers that nothing would change for a year does not undercut the significance of these changes. First of all, it is far from clear what the managers intended to convey in these conversations. And as discussed above, they were given no such guarantees during their interviews and were in fact warned of the likelihood of being bumped. The launch agreement itself provides no assurances against being bumped for an entire year; it merely requires bumping employees to have been trained at the DTF. *See* GC Ex. 28 (“The exercising of shift preference during the one year launch will also be dependent on the Versatility Matrix.”). In any event, un rebutted evidence establishes that Ford had a concrete plan, from the outset of its insourcing decision, to fully integrate the former Jacobs employees into the R&E Center ecosystem within a year.

grievance procedure. Tr. at 351:12–353:3. They are responsible for deciding where to staff all Local 245 members, including the former Jacobs employees, both on a temporary and long-term basis. Tr. at 319:6–323:15, 349:12–350:9, 522:12–18, 535:10–19, 590:16–20. By contrast, on-site contractor-supervisors make no important personnel decisions, a fact that weighs heavily in rebutting the single-facility presumption. *See Jerry’s Chevrolet*, 344 NLRB at 691 (single-facility presumption rebutted where local managers “evinced only minimal local autonomy” because even though they “possess authority over some day-to-day matters of the [facilities] they manage, they lack substantial autonomy over labor relations and personnel policies and procedures.”).

It is true that the DTF-based staff’s first line-supervision comes from contractors who were also in the supervisory chain when Jacobs operated the DTF. However, *most* tradespersons in the R&E Center receive their immediate supervision from contractors. Tr. at 341:1–342:1. As discussed above, these supervisors lack any significant authority over personnel policy, making their role less important to the successorship analysis. That is all the more so in light of the technocratic role of first-line supervisors in the R&E Center. Most are not skilled tradespersons, and they largely fulfill a “clerk function” of handing out work orders, approving leave requests, and other mundane administrative duties. Tr. at 341:16–20. Throughout the R&E Center, technical assistance tends to come from team leaders and fellow tradespersons. Tr. at 343:10–344:9, 490:15–24, 506:9–12, 527:14–20. That process for disseminating technical assistance is in evidence at the DTF where Messrs. Miller and Kurzawa have been receiving training on combustion safety from team leader Mike O’Malley, and where mobile tradespersons are working with DTF employees to produce safety placards for all equipment. Tr. at 211:20–212:4, 218:1–8, 254:7–255:9, 396:1–397:22, 514:12–15; Int. Ex. 17. Additionally, the expectation that

the former Jacobs employees will be bumped to another facility and work overtime elsewhere under normal conditions is highly relevant to the question of supervision because when these things occur, they will be supervised by different first-line supervisors. *See Lab. Corp. of Am. Holdings*, 341 NLRB 1079 (2004) (“We must also consider . . . supervisory authority in light of planned future changes and recent past changes.”).

Fifth, the DTF facility is geographically proximate to other R&E Center facilities. Almost all R&E Center facilities are within a four-mile radius. *See* Int. Ex. 2. The DTF, in particular, is within walking distance of three other R&E Center facilities where various skilled tradespersons, including other steam engineers and electricians, work. Int. Ex. 1 (listing the trades who work at the nearby EMDO facility); Tr. at 360:16–25; *see Jerry’s Chevrolet*, 344 NLRB at 960 (finding the ability to “walk from one [facility] to the next” to be a “salient factor” in rebutting the single-facility presumption); *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003) (noting that in *P.S. Eliot* it was “significant . . . that . . . the work locations of the large cleaning firm were not geographically distant from each other and the cleaning firm also assigned other employees to the building at which the seven employees worked”).

Sixth, there is a similarity of employee skills and working conditions for tradespersons across the entire bargaining unit. It is uncontested that the steam engineers and electricians at the DTF have the same licenses and skill sets as the electricians and steam engineers elsewhere in the DTF. Tr. at 136:10–137:2, 203:11–16, 491:2–5, 533:20–24. Every witness who testified about the training Local 245 members have been receiving at the DTF stated that the training addresses systems familiarity with the machines and equipment at the DTF. Tr. at 136:2–9, 214:2–12, 491:2–9, 539:21–522:7, 526:5–9, 551:25–552:5. It is the type of training a certified tradesperson would expect when entering any new facility with which he or she is unfamiliar.

Tr. at 489:21–490:20, 491:22–492:5, 526:10–19, 527:21–528:5, 541:15–24, 552:6–553:13.

There are no special tools or knowledge required to do the skilled maintenance work at the DTF, and the work is similar to the work in other testing facilities within the R&E Center. Tr. at 391:22–392:6, 485:6–25, 527:21–528:5, 543:5–9, 553:3–9. The General Counsel presented no contrary evidence.

Finally, because the successorship test is a totality of the circumstance test, the sheer *quantity* of R&E Center buildings serviced by Local 245 should not be disregarded. Nor should it be disregarded that every Ford-owned building in which vehicle prototype testing occurs is maintained by Local 245. This fact bears consideration on its own, but also bears on the credibility of Mr. Vergari’s and Mr. Vicari’s testimony that they have always planned and expected to have the DTF completely integrated into the R&E Center’s maintenance ecosystem no later than the end of the one-year launch period provided in the launch letter.¹⁴

In sum, the enumerated successorship factors, as well as other relevant unenumerated factors, compel the conclusion that the continuity of the former unit, which consisted of a few steam engineers and electricians, has been shattered. The skilled maintenance work performed by company employees at the facility is no longer limited to just two trades, nor to just six

¹⁴ For the same reason, all the post-insourcing evidence presented at trial is relevant even though the Charging Party made its demand to bargaining at the beginning of the insourcing process. The successorship analysis must be made at the time of the bargaining demand, so long as the employer has hired a representative complement of employees at the time. As discussed in the next section, there is a serious question whether a representative complement has yet been hired. But even if there was a representative complement from the date the insourcing became official, Ford already had concrete plans to integrate the DTF into the larger R&E Center by that time—and that intent was communicated to the Jacobs employees both before and after their hiring. Moreover, the contract provisions relating to overtime equalization, personnel policy and assignments, and shift bumping—all of which inevitably cause employee interchange across the unit—were effective from the first day that Local 245 began maintaining the facility. Thus, all the evidence of subsequent integration, and all the evidence of integration throughout the rest of the R&E Center, establishes the nature and credibility of Ford’s plan all along.

individuals. And the four former Jacobs employees' jobs have already transformed with additional overtime, a new emphasis on training (in both directions), safety, and interaction across the unit. Clear and credible plans are in place, and have been in place since the former Jacobs employees were hired, to even more thoroughly transform and integrate the unit. Under these unique and compelling circumstances, the law of successorship does not, and ought not, compel Ford to essentially red-circle six skilled positions in one facility and disrupt a dynamic labor relations model that has served both it and Local 245 well for decades.

C. Alternately, Ford has not yet assigned a representative complement of tradespersons to the DTF.

A successorship determination cannot be made until the successor employer has hired a “substantial and representative complement of its workers” into the unit. *MSK Corp.*, 341 NLRB 43, 44 (2004). The Board typically “finds an existing complement to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the job classifications.” *Shares, Inc.*, 343 NLRB 455, 455 n.2 (2004), *enf'd* 443 F.3d 939 (7th Cir. 2006).

Here, it is uncontested that Ford initially staffed six skilled tradespersons at the DTF in two classifications: steam engineers and electricians. It is also uncontested that Ford has “always” intended to staff ten skilled tradespersons at the DTF, and that it specifically budgeted for that level of staffing during 2017. Tr. at 386:8–25, 428:5–429:7, 459:1–4, 576:5–577:17, 579:9–581:14; Resp. Ex. 1. As of the time of the hearing, Ford had not yet assigned the last four tradespersons in part because it was still determining what the optimal trades would be for the four remaining budgeted heads. Tr. at 428:21–429:4. But the assigned tradespersons will likely include plumbers, millwrights, an additional electrician, and possibly other classifications. *Id.*; see Resp. Ex. 1. Therefore, although Ford has certainly hired 30 percent of the eventual

complement of steam engineers and electricians, it has not placed anyone *at all* into the likely two to three other classifications of tradespersons that will be staffed at the site. As such, Ford has not yet assigned *anyone* into 50 percent or more of the skilled maintenance classifications likely to be staffed at the DTF. Thus, there is not yet a substantial and representative complement of skilled tradespersons at the DTF.

In considering the “substantial and representative complement” issue, it is important to consider that the initial complement of six skilled tradespersons was not *representative* in a critical and predictable way. It is uncontested that Ford plans to *transfer* the remaining four skilled tradespersons to the DTF from its larger Local 245-represented workforce, and that this has been the plan since the day Ford took over maintenance at the DTF. Thus, this is not a case in which, at the time a bargaining demand is made, it is unclear what the entire unit’s eventual union sympathies will be. Rather, the full complement will consist of a majority (six out of ten) tradespersons who have long been represented by UAW Local 245. Under these circumstances, the initial six employees should not be treated as a *representative* complement when they plainly do *not* represent the predictable majority view of the eventual full complement.

III. Even if Ford Is a Successor to Jacobs, the Former Jacobs Employees Have Accreted to the Multi-Facility Local 245 Unit.

Even if Ford is found to be a successor to Jacobs at the DTF, the former Jacobs unit has accreted to the existing Local 245 unit for reasons similar to the ones discussed above. “An accretion is simply the addition of a *relatively small group* of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.” *Judge & Dolph, Ltd.*, 333 NLRB 175, 180 (2001) (quoting *Lammart Industries v. NLRB*, 578 F.2d 1223, 1225 n. 3 (7th Cir. 1978)) (emphasis added). In determining whether an accretion has occurred, the Board examines several factors: integration of operations,

centralization of management and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange. *See Progressive Serv. Die Co.*, 323 NLRB 183 (1997). Employee interchange and shared supervision are the most important factors. *Archer Daniels*, 333 NLRB at 675. Accretion is more favored where the union seeking the accretion “is overwhelmingly predominant” in terms of its size as compared to the unit that stands to be accreted. *Pergament U.S.*, 296 NLRB 333, 345 (1989).

Each of the accretion factors favors a finding of accretion here. As a threshold point, there is no question that Local 245—a unit that includes over 500 skilled tradespersons including over 200 steam engineers and electricians—is “overwhelmingly predominant,” *Pergament*, 296 NLRB at 345, compared with the six individuals assigned to the DTF. Furthermore, two of those six individuals were already members of Local 245 leaving only four individuals whose representational status would change as the result of an accretion finding.

There is significant employee interchange by DTF-based employees with other Local 245 members. The very composition of the proposed unit—four former Jacobs employees and two longer-term Local 245 members—demonstrates interchange from the outset, as the Local 245 bare minority brought their own experience with the R&E Center and relationships with other bargaining unit members into the DTF. Furthermore, as already detailed above, *see supra* at 43–50, there is significant interchange between the employees at the DTF and the mobile members of Local 245. Mobile tradespersons regularly perform a variety of maintenance work at the DTF, and this work requires them to check-in and work with DTF-based personnel. Tr. at 166:4–11, 209:23–210:21, 219:8–220:3, 395:16–396:4, 409:9–13, 487:11–488:14. The hours of work performed by mobile tradespersons at the DTF is estimated to exceed the hours of maintenance

work performed by the DTF-based employees, providing ample opportunity for interchange. Tr. at 370:21–373:12; Int. Ex. 9 (Local 245’s conservative estimate that the work to be done by mobile tradespersons would be the equivalent of 10.6 full time employees). This work has also involved mobile tradespersons training the DTF-based employees on Ford safety standards such as combustion safety and placarding, Tr. at 396:1–397:22, 514:12–15; Int. Ex. 17; *see also* Tr. at 211:20–212:4, 218:1–8, 254:7–255:9—a direct and concrete form of interchange that is also calculated to enable DTF-based employees to perform duties at other R&E Center facilities in the future.

Speaking of interchange through training, the DTF-based employees have been assigned to lead Ford’s ongoing program to provide one-on-one systems familiarity training at the DTF to other Local 245 members. This provides a constant stream of interchange as trainees shadow trainers for days or weeks at a time. Over 20 steam engineers and electricians have been trained in this way to date, and Ford’s expectation is for many more to receive such training. Tr. at 136:10–12, 213:4–11, 409:10–411:18, 414:11–415:17, 489:12–18, 596:18–23; Int. Exs. 13–14. This training is part of a conscious plan to integrate the DTF into the R&E Center consistent with past business practice. It was foreseen from the very inception of the insourcing discussions, was included in the launch agreement, and is the subject of weekly meetings attended by Ford managers, Local 245 leaders, and former Jacobs employee Jesse Miller. GC Ex. 28; Tr. at 204:20–206:6, 387:20–388:1, 395:5–396:4. In addition, the DTF-based employees have received training, both at orientation and beyond, at centralized locations in groups that include other Local 245 members. Tr. at 419:13–420:23, 421:17–422:3; *see also* Tr. at 215:11–20, 266:25–267:2, 267:8,

Additional interchange comes via overtime. Tradespersons from outside the DTF have worked overtime at the DTF, Tr. at 492:7–14, 528:13–24, and DTF-based employees have worked

overtime elsewhere, Tr. at 424:9–11, 493:5–14. *See Novato Disposal Servs.*, 330 NLRB 632, 632 n.3 (2000) (stating that temporary transfers are even stronger evidence of interchange amounting to accretion than permanent transfers). Overtime interchange admittedly has not been overly common among steam engineers and electricians since the insourcing, but that is because the entire R&E Center is experiencing an anomalously high volume of work—more than at any time during the past 29 years. Tr. at 386:23–25, 426:13–18. Given that nearly *every* facility has a high demand for overtime, Local 245 tradespersons are often working overtime at their home facilities and there has been less need than usual to switch employees around to equalize overtime between employees stationed at different facilities because the demand for overtime is high *everywhere*. Tr. at 424:15–425:1.

Moreover, like everyone else in Local 245, each of the DTF-based employees is subject to being re-assigned to any other facility on either a long- or short-term basis as determined by Ford managers. Tr. at 319:6–323:15, 349:12–350:9, 522:12–18, 535:10–19, 590:16–20. The job offers made to the former Jacobs employees were to work at the “Research and Engineering Center” and make no mention of the DTF. GC Exs. 2–9. Across Local 245, approximately 20–25% of R&E Center tradespersons can expect to be reassigned to a new facility within a given year in addition to overtime assignments at other facilities. Tr. at 321:4–9. Each DTF-based employee is also subject to being bumped to another R&E Center facility during the shift-preference period that is currently ongoing in December 2017. The likely reason they were not already bumped during the prior bumping period in August of 2017 is because very few other Local 245 steam engineers and electricians had yet received systems familiarity training at the DTF at the time. Tr. at 391:19–21, 392:23–393:12. In turn, the fact that only three employees were trained during the prior bumping period reflects the fact that training efforts at the DTF were focused on providing a longer systems

familiarity orientation to the two Local 245 transferees through July of 2017. Tr. at 483:17–484:25.

There is also shared supervision across the R&E Center, including at the DTF. It is true that the first-level contractor-supervisor at the DTF does not supervise employees elsewhere. However, first-level contractor-supervisors in the R&E Center are mostly limited to clerical functions like handing out work orders and approving leave requests. Tr. at 341:16–20; *see also* Tr. at 342:17–22. As discussed above, all significant personnel decisions are made by the Ford managers who are responsible for multiple R&E Center facilities. *See* Int. Ex. 7; Tr. at 345:10–24. These centralized decisions include hiring and firing, Tr. at 348:12–13, interviewing, Tr. at 348:14–17, promotions, Tr. at 348:18–22, grievance handling (even at the oral stage), Tr. at 351:12–353:3, the determination of whether to assign an employee to mobile or stationary duty, 348:4–8, the determination of where to assign stationary employees and when to temporarily redeploy them, 349:22–25, the determination of whether and where overtime will be worked, 340:4–7, and what safety standards and training to require in the R&E Center (in consultation with Local 245), Tr. at 348:23–349:8. Furthermore, the contractor-supervisor at the DTF attends a weekly meeting about the transition of the DTF, at which former Jacobs employee Mr. Miller is also present along with Ford Superintendent Eric Gerling. Tr. at 204:20–205:1, 395:5–396:4. Mr. Gerling is in charge from the management side at these meetings. Tr. at 468:10–14.

The other factors also favor accretion. The “integration of operations” factor is demonstrated by the R&E Center’s dynamic staffing model. It is also demonstrated by the shared use of vehicles, equipment, and training. For example, electrician Emanuel Dan described a situation that occurred during his training at the DTF in which he and a former Jacobs employee went to the R&E Center’s central parts depot (“box shop”) to retrieve materials to complete an

electrical task at the DTF. Tr. at 540:14–541:14. In fact, the very nature of the R&E Center—it takes prototype automobiles through every stage of development from research through testing, Tr. at 298:12–22, 302:10–305:1, 467:10–14—shows that the Center is an integrated operation. That integration drives the need for an integrated maintenance workforce: the progress of a vehicle through the Center’s various facilities drives the maintenance staffing needs at those facilities. Tr. at 586:17–587:1.

The “centralization of management and administrative control” and the “common control of labor relations” factors have already been addressed in the discussion of the supervision factor. *See supra* at 55.

The “geographic proximity” factor strongly favors a finding of accretion. As discussed above, the DTF is one of 58 facilities serviced by Local 245, all of which are located within a roughly four-mile radius of each other. *See* Int. Ex. 2; Tr. at 302:14–15, 303:23–304:2, 305:2–11. More specifically, the DTF is located across the street and within walking distance of three other facilities serviced by Local 245. Tr. at 360:16–25.

The “similarity of working conditions, skills and functions” factor also favors accretion. *See St. Regis Paper Co.*, 239 NLRB 688, 691 (1978) (finding an accretion where “[t]he work performed by the mechanics working out of [one] facility is identical to the work performed by mechanics working out of [a second facility]”), *enf’d in relevant part* 674 F.2d 104 (1st Cir. 1982). The similarity of work between the DTF and other facilities is fully discussed in the successorship section. *See supra* at 48–49.

On first blush, the bargaining history factor might arguably favor a finding of no accretion because the bare majority of the six employees stationed at the DTF do have a history of bargaining as a unit with the contractors who provided the maintenance services at the DTF before Ford

insourced the work. However, it is also the case that the other two members of the purported unit have their *own* bargaining history as part of Local 245—as will the additional four skilled tradespersons Ford plans to transfer into the DTF in the immediate future. In light of these facts, the bargaining history factor should be entitled to relatively little weight in this case and ultimately tilts slightly in Local 245’s favor anyhow.

This is not a typical accretion case. The unit subject to accretion is tiny when compared to the much larger, and unquestionably integrated, multi-facility unit that prevails elsewhere at the R&E Center. The only facts arguably cutting against accretion are the bargaining history of the four former Jacobs employees, the still-evolving nature of the DTF transition, and the fact that certain mundane day-to-day supervision continues to come from DTF-based contractor-supervisors. But those facts are outweighed by the countervailing considerations discussed above. At the end of the day, the unique—and uniquely long-standing—nature of Local 245 as an integrated maintenance operation casts a long shadow over this case. The facts described above all follow ineluctably from the unit’s nature and history. The accretion analysis can and should reflect as much.

CONCLUSION

When Ford insourced the maintenance work at the DTF, it properly determined that Local 245 represents the maintenance workers at the facility. Indeed, Ford was contractually obligated to recognize as much, just as it has done for decades at every other facility throughout the R&E Center. That fact alone should suffice to decide this case. But to the extent it is deemed necessary to conduct a successorship or accretion test, the integrated nature of Local 245, the way in which it has long maintained the entire R&E Center, and the resulting employee interchange across the unit, compel the conclusion that all the maintenance workers in Local 245 belong in a single, multi-

facility unit. Board law is not so inflexible as to compel the conclusion that Ford and Local 245 must endure the existence of a single, isolated, six-person unit in a single facility that will disrupt their longstanding business model and their efforts to operate the R&E Center as an integrated whole. The charges should be dismissed.

Respectfully Submitted,

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AND ITS LOCAL NUMBER 245

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Dated: December 22, 2017

CERTIFICATE OF SERVICE

I, Philip Mayor, hereby certify that I caused a true and correct copy of the foregoing Post-Hearing Brief of Intervenors International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local No. 245 to be served via email on the following parties on the date below:

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